



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MRA/170447

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 02, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Manitowoc County Department of Human Services in regard to Medical Assistance, a hearing was held on January 07, 2016, at Manitowoc, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals can change the cost share determination made by the local economic support agency.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]

Manitowoc County Department of Human Services  
3733 Dewey Street  
Manitowoc, WI 54221-1177

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County.
2. Petitioner is a community waivers participant.

3. Petitioner's current court appointed guardian filed this appeal to see if some relief is available to Petitioner in his patient liability obligation because of financial obligations imposed on Petitioner because of alleged past mishandling of Petitioner's funds by a prior guardian. This apparently dates back to 2007.
4. As of February 1, 2016 the agency determined Petitioner's income to be \$1840.00. This consists of \$ 1339.00 in Social Security Retirement benefits and \$501.00 in [REDACTED] benefits.
5. The [REDACTED] has not provided information to the guardian or agency as to whether or not Petitioner's [REDACTED] benefits are classified as aid and attendance benefits or other disregarded sums.
6. The agency calculated Petitioner's cost share as of February 1, 2016 to be \$688.07. The calculation deducted a basic needs allowance of \$913.00 and a special housing amount of \$218.93 from the income of \$1840.00. The cost share would drop if all, or any part of, the [REDACTED] benefit were classified as aid and attendance or other disregarded sums.

### DISCUSSION

Individuals eligible for waivers programs are required to contribute to the cost of care. *Medicaid Eligibility Handbook (MEH)*, §28.5.1. It is a condition of eligibility. Economic support agencies are required to use the formulas set forth in the MEH in calculating costly share. The first step is determining whether a person is a Group A, B or B Plus participant. To be in Group A a person must be an SSI recipient. *MEH*, §28.8.2. Group B is individuals whose income is less than \$2199.00. *MEH*, §28.8.3 and §39.4.1. Petitioner is a Group B participant. The relevant provisions are detailed and are:

Cost share calculation for a Group B participant is directed by *MEH*, §28.5.1 and requires a determination of the personal maintenance allowance. It is calculated as follows:

The personal maintenance allowance is an income deduction used when calculating a cost share for a Group B or B Plus waiver member.

The personal maintenance allowance (Line 6 and Page 2 of the worksheet) is for room, board, and personal expenses. It is the total of the following:

1. Community Waivers Basic Needs Allowance (see Section 39.4.2 Elderly, Blind, or Disabled Deductions and Allowances).
2. Sixty-five dollars and ½ earned income deduction (see Section 15.7.5 \$65 and ½ Earned Income Deduction).
3. Special housing amount. This is an amount of the person's income set aside to help pay housing costs. If the waiver applicant's housing costs are over \$350, add together the following costs:
  - a. Rent.
  - b. Home or renters insurance.
  - c. Mortgage.
  - d. Property tax (including special assessments).
  - e. Utilities (heat, water, sewer, electricity).
  - f. "Room" amount for members in a CBRF, Residential Care Apartment Complex, or an Adult Family/Foster Allowance Home. The case manager determines and provides this amount.

The total, minus \$350, equals the special housing amount. The person can set this amount aside from his or her income.

*MEH*, §28.8.3.1.

The Basic Needs Allowance is \$913.00. *MEH*, §39.4.2. The agency also determined a special housing amount deduction of \$218.93.

These deductions are made from gross income. The gross here is \$1840.00. Gross income could be reduced with information from the [REDACTED] as aid and attendance, housing allowances and unusual medical expenses are disregarded as income. *MEH*, §15.3.26. It is apparent here that Petitioner's current guardian has not been able to get answers from the [REDACTED] despite diligently trying to do so. Without that information neither the local agency or the Division of Hearings and Appeals can ignore the formulas above and exempt the [REDACTED] income.

Ultimately, the problems here are not amenable to a solution by the Division of Hearings and Appeals. The Division of Hearings and Appeals does not possess equitable powers. *See, e.g., Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). It is a creation of statute and must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Again, without the cooperation of the [REDACTED] the Division of Hearings and Appeals cannot exempt income thereby reducing Petitioner's cost share.

Additionally, as it is not a court of general jurisdiction it can exercise no authority over the prior guardian. Action against the prior guardian would have to be brought in Circuit Court.

### **CONCLUSIONS OF LAW**

That the local agency and the Division of Hearings and Appeals cannot change the cost share determined here without confirmation from the [REDACTED] as to whether or not some, or all of, Petitioner's [REDACTED] benefit is categorized by the [REDACTED] as aid and attendance, housing allowances or unusual medical expenses.

**THEREFORE, it is**

### **ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 17th day of June, 2016

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on June 17, 2016.

Manitowoc County Department of Human Services  
Division of Health Care Access and Accountability